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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1972

## No. 72-1440

LEE V. OLENZ,

Petitioner,

vs.

A. L. MAROVITZ, United States District Court Judge,

and

TELETYPE CORPORATION, D. R. CARMICHAEL, R. H. KLICH, R. E. DE CAMP, C. C. STUKES, WESTERN ELECTRIC COMPANY, INCORPORATED, J. L. WIER, AMERICAN TELEPHONE & TELEGRAPH COMPANY, ILLINOIS BELL TELEPHONE COMPANY, C. D. RICHARDSON, BELL TELEPHONE LABORATORIES, INCORPORATED, UNITED STATES DEPARTMENT OF LABOR,

Respondents.

## BRIEF OF RESPONDENT, TELETYPE CORPORATION, IN OPPOSITION TO THE PETITION OF THE PETITIONER, LEE V. OLENZ, FOR A WRIT OF CERTIORARI

PETITION NOT PRINTED

QUINTIN B. SAN HAMEL,
L. BOW PERCHERT
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Skokie, Illinois 60076

*Attorneys for Respondent Teletype Corporation*

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## BRIEF OF RESPONDENT, TELETYPE CORPORATION, IN OPPOSITION TO THE PETITION OF THE PETITIONER, LEE V. OLENZ, FOR A WRIT OF CERTIORARI

### PRELIMINARY STATEMENT.

On April 23, 1973, this Court docketed the Petition for a Writ of Certiorari of petitioner, Lee V. Olenz, ("Olenz") appearing *pro se* in the above-captioned case. The Petition is for the review of a decision by the United States

Court of Appeals for the Seventh Circuit denying Olenz' Petition for Writ of Mandamus or Prohibition to disqualify the District Court Judge, A. L. Marovitz, from sitting in this case. This brief in opposition to Olenz' Petition for Certiorari is submitted on behalf of respondent, Teletype Corporation ("Teletype").

## I.

## NATURE OF THE CASE.

Olenz brought this action in the United States District Court for the Northern District of Illinois, Eastern Division following the termination of his employment by Teletype. Olenz named some twelve parties, including Teletype, as defendants. Service was ultimately obtained upon six of those named as defendants: Teletype, Western Electric Company, Incorporated; American Telephone & Telegraph Company; Illinois Bell Telephone Company; Bell Telephone Laboratories, Incorporated; and the United States Department of Labor. None of the individuals named as defendants was ever served or appeared in the action. As will appear below, Teletype is the only defendant which remains in the case.

Olenz's complaint(*) contains eight counts and alleges, among other things: that he was wrongfully terminated from his position at Teletype by reason of his age; that defendants Teletype, Western Electric, American Telephone & Telegraph and the United States Department of

(*) What is referred to throughout this brief as the complaint is actually designated by Olenz as the "amended complaint." It is dated October 6, 1972.

Labor, conspired to and did prevent his reemployment in the "Bell System"; and that various of defendants' acts, including the circulation of a memorandum allegedly critical of Olenz' performance at Teletype, were defamatory under Illinois law. Olenz claims both general damages and punitive damages.

## II.

## THE QUESTION PRESENTED FOR REVIEW.

Despite Olenz' assertions to the contrary in his Petition for Certiorari, there is but one question which is properly presented for review by the Court. That question is:

Did the United States Court of Appeals for the Seventh Circuit err in denying Olenz' Petition for a Writ of Mandamus or Prohibition directing Judge A. L. Marovitz to disqualify himself on the grounds of bias or prejudice?

## III.

## PROCEEDINGS TO DATE.

Olenz filed his original complaint on July 6, 1972.(*) The case was assigned to Judge Abraham Lincoln Marovitz. Thereafter, the complaint was twice amended before summons was issued on October 6, 1972, and by October 25, 1972, the six defendants listed above had been served.

(*) In the interests of clarity and completeness a reproduction of the entire docket in the District Court is attached hereto as an *Appendix*.

On October 31, 1972, the five corporate defendants filed appearances, and shortly thereafter, the time for each of them to move, answer or otherwise plead was extended by the Court to November 20, 1972. On that date, those defendants moved to dismiss the complaint on various grounds, including lack of subject matter jurisdiction and the failure to state a claim upon which relief could be granted. The United States Department of Labor also moved to dismiss the complaint.

On November 30, 1972, Olenz apparently responded to defendants' motion by filing "Plaintiff's Memorandum Answering Corporate Defendants' Motion to Strike and Dismiss". The corporate defendants moved on December 12, 1972 for leave to file briefs in support of the motions to dismiss, and for an order staying discovery pending determination of the motions. Olenz moved, on the same date, for an order finding the corporate defendants in default, and to strike the motions of the defendants for leave to file briefs and to stay discovery. The Court requested the defendants to file more detailed memoranda than had been submitted with the motion in order to aid Olenz in the preparation of an answering brief. Accordingly, Judge Marovitz entered orders on December 12, 1972 granting defendants until December 22, 1972 to file their more detailed briefs in support of the motions to dismiss; granting plaintiff until January 12, 1973 to file an answering brief; granting defendants until January 22, 1973 to file reply briefs; setting down for disposition on February 23, 1973, defendants' motions to dismiss; and staying all discovery until disposition of the motions to dismiss. The plaintiff's motions were denied. Defendants timely filed their briefs in support of their motions to dismiss Olenz' complaint.

On December 27, 1972, Olenz filed an "Affidavit of Disqualification of Honorable Judge Abraham Lincoln Marovitz" and a memorandum in support thereof. Neither the "Affidavit" nor the memorandum set forth any facts or evidence of bias as required by 28 U.S.C. Sec. 144. On January 2, 1973, the Court "ordered that plaintiff's motion for disqualification of Judge [Marovitz] be and the same is hereby denied".

On January 10, 1973, Olenz filed, in the United States Court of Appeals for the Seventh Circuit, a "Petition for a Writ of Mandamus or Prohibition to Honorable A. L. Marovitz, United States District Judge . . . And For Other Relief".(*) The following day, Olenz was granted an extension of time from January 12, 1973 until January 29, 1973 within which to file a brief in answer to defendants' motion to dismiss. The dates for the filing of defendants' reply briefs and the disposition of the motions to dismiss were also extended.

On January 17, 1973, Olenz' Petition for Writ of Mandamus or Prohibition was denied by Circuit Court Judges Cummings, Pell and Stevens. On January 17, 1973, also, Olenz' motion, made in the Seventh Circuit, to stay all proceedings in the District Court pending a ruling on the petition for Writ of Mandamus or Prohibition was denied. On January 22, 1973, Olenz filed a Petition for a rehearing and suggestion for rehearing *in banc* by the

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(*) The other relief sought seems to have been "review the orders, opinions or rulings of A. L. Marovitz, U. S. District Judge for the Northern District of Illinois, Eastern Division regarding this case."

Seventh Circuit of his Petition for Writ of Mandamus or Prohibition. It is for the review of the January 17, 1973 decision and the denial, on March 8, 1973, of a rehearing *in banc* that Olenz caused to be filed his petition for *Certiorari* in this Court.

On January 29, 1973, Olenz moved in the District Court for an order extending his time within which to file a brief in answer to defendants' motion to dismiss from January 29, 1973 through and including February 13, 1973. This motion, for a second extension of time, was also granted and again the time was extended for defendants to file their reply briefs and for the disposition of the motions to dismiss. On February 13, 1973, Olenz filed "Plaintiff's Exception Taken to the Exceedingly Prejudicial Proceedings Against Him and His Answering Statements". It is unclear whether this memorandum was intended to be in answer to defendants briefs filed in December, 1972 in support of their motion to dismiss.

Thereafter on March 1, 1973, Olenz filed "Plaintiff's Memorandum to Retain as a Matter of Record the Malicious and Prejudicial Proceedings Against Him in This Case". But on March 7, 1973, the Court granted the United States Department of Labor's motion to strike that memorandum. On that day also, Olenz' motion to strike the corporate defendants' motion to dismiss was denied.

On March 8, 1973, the Seventh Circuit denied Olenz' Petition for a hearing *in banc*. Olenz has also petitioned for review of this decision. On March 23, 1973, the District Court ruled on the motion to dismiss the complaint, and on March 29, 1973, an order was entered which dis-

missed, with prejudice and without costs, the complaint against all of the defendants save Teletype. The order further dismissed, with prejudice and without costs, Counts II through VIII inclusive of the complaint against Teletype. The one remaining Count against Teletype is now the subject of a motion for summary judgment filed by this defendant. That motion is still pending before the District Court.

## IV.

## CONCLUSION.

From the foregoing, it is clear that the proceedings in the District Court have followed a reasonable course and that Olenz has been accorded fair and impartial consideration, and that neither Judge Marovitz nor the Seventh Circuit Court of Appeals found grounds for disqualifying Judge Marovitz. Further, it is apparent from Olenz' Petition that he has not presented either in this Court or in any of the Courts below any facts or evidence showing bias or prejudice against him or in favor of defendants or any of them. In light of the foregoing, respondent, Teletype, respectfully requests that Olenz' Petition for Writ of Certiorari be denied.

Respectfully submitted,

QUINTIN B. SAN HAMEL
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5555 W. Touhy Avenue
Skokie, Illinois 60076

*Attorneys for Respondent*
*Teletype Corporation*

# APPENDIX

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE MAROVITZ

Jury demand date:
Plaintiff 7-6-72

C 1651

D. C. Form No. 105A Rev.

| TITLE OF CASE | ATTORNEYS |
|---|---|
| (P-1) LEE V. OLENZ,<br><br>Plaintiff,<br><br>vs.<br><br>(D-1) TELETYPE CORPORATION, (Prime)<br>(d-2) WESTERN ELECTRIC CO.<br>(D-3) ILLINOIS BELL TELEPHONE CO.<br>(D-4) BELL LABORATORIES INDIAN HILL<br>(D-5) Wage and Hour and Public Tonract Div. of U. S. Dept. of Labor,<br><br>Defendants. | For plaintiff:<br>Lee V. Olenz pro se<br>10628 Newbury<br>Westchester, Ill. 562-4720 |
| (D-6) D. R. CARMICHAEL, President of Teletype Corp.; (D-7) R. H. KLICH, a Vice-President of Teletype Corp.; (D-8) R. E. DECAMP, a Manager of Teletype Corp.; (D-9) C.C. STUKES, an Assistant Manager of Teletype Corp.; (D-10) J.L. WIER, Director of Industrial Relations of Western Electric Co.; (D-11) AMERICAN TELEPHONE AND TELEGRAPH CO., a Foreign Corporation; (D-12) C. D. RICHARDSON, Systems Design Director of Illinois Bell Telephone Co.<br>Additional Defendants per Amended Complaint 10-6-72. | For defendant: (For Teletype Corp., Ill. Bell Telephone, American Telephone, Western Electric & Bell Labs, Inc.)<br>Quintin B. San Hamel<br>5555 W. Touhy Ave.<br>Skokie, Ill. 60076 982-3200<br><br>U..S. Attorney |

| STATISTICAL RECORD | COSTS | | DATE | NAME OR RECEIPT NO. | REC. | DISB. |
|---|---|---|---|---|---|---|
| J.S. 5 mailed | Clerk | | | | | |
| J.S. 6 mailed | Marshal | | | | | |
| Basis of Action:<br>Civil Rights<br>Seeks 1,000,000.00 | Docket fee | | | | | |
| | Witness fees | | | | | |
| Action arose at: | Depositions | | | | | |

A TRUE COPY ATTEST
H. STUART CUNNINGHAM, CLERK

By _____
DEPUTY CLERK
U. S. DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

DATE: MAY 14 1973

| DATE | PROCEEDINGS | Date Order or Judgment Noted |
|---|---|---|
| 7-6-72 | Filed Complaint and 8 copies (JS-5) | $15.00 |
| 7-6-72 | Filed Designation P | |
| 7-7-72 | After consideration by the Executive Committee it is ORDERED that this case be assigned to the calendar of an individual Judge in accordance with Rule 10 B 2 of the General Rules of this Court. It is also Ordered that summonses are not to issue in this matter until further order of Court-Robson, J. by the Executive Committee<br>Mailed notices 7-10-72 P<br>(Assigned to Judge Marovitz) P | |
| 7-12-72 | Order cause is set for a status report on July 19, 1972 at 2:00 p.m.-Marovitz, J.<br>Mailed notices 7-12-72 P | |
| 7-19-72 | Leave is granted plaintiff to file an amended complaint on or before August 18, 1972 and cause is continued for a status report to August 18, 1972 at 10:00 a.m.-Marovitz, J.<br>Mailed notices 7-20-72 P | |
| 8-18-72 | Filed amended complaint and jury demand. | |
| 8-18-72 | Leave to file amended complaint. Service on summons to be held up until further order of court. Cause continued to September 29, 1972 at 10 AM. for status report. - Marovitz, J.<br>Mailed notices 8-21-72 k | |
| 9-14-72 | On the Courts own motion order cause is continued for a status report from September 29, 1972 to October 6, 1972 at 10:00 a.m.-Marovitz, J.<br>Mailed notices 9-15-72 P | |
| 10-6-72 | Filed plaintiff's Second Amended Complaint. | |
| 10-6-72 | Leave is granted plaintiff to physically withdraw the first amended complaint and to substitute and file a second amended complaint and summons to issue. Cause is continued for a status report to November10, 1972, at 10:00 A. M. MAROVITZ, J.<br>Mailed notice 10-10-72. IAM | |
| 10-12-72 | Issued summons and 4 copies with 4 copies of complaint to U. S. Department of Labor | |
| 10-12-72 | Issued summons and 5 copies with 5 copies of amended complaint to Teletype Corp., Western Electric Co., American Telephone and Telegraph, Illinois Bell Telephone Laboratories and Illinois Bell Telephone Co. P | |
| ~~10-31-72~~ | ~~--Filed-Appearance-of-Teletype-Corp.,-Illinois-Bell-Telephone-Co.,~~<br>~~-----American--Telephone-&-Telegraph,-Western~~<br>(continued) | |

D. C. 110A Rev. Civil Docket Continuation

| DATE | PROCEEDINGS | Date Order or Judgment Noted |
|---|---|---|
| 10-17-72 | On the Courts own motion order cause is advanced for a status report from November 10, 1972 to November 9, 1972 at 10:00 a.m.-Marovitz, J. Mailed notices 10-18-72 P | |
| 10-18-72 | Filed summons returned served on Teletype Corp., Illinois Bell Telephone Co. and U. S. Dept. of Labor P | |
| 10-25-72 | Filed Marshal's return on service of summons, returned served as to American Telephone & Telegraph, Co., Western Electric Corp, Inc. and Bell Telephone Laboratories, Inc. (THREE SERVICES) LAM | |
| 10-30-72 | Filed Request for admission by Plaintiff to Teletype Corp. P | |
| 10-31-72 | Filed Appearance of Teletype Corp., Illinois Bell Telephone Co., American Telephone & Telegraph Co., Western Electric Co. and Bell Telephone Laboratories, Inc. P | |
| 11-6-72 | Filed Affidavit rule 39 by defendants | |
| 11-6-72 | Filed Request for admissions to Bell Telephone Laboratories | |
| 11-6-72 | Filed Request for admissions to Illinois Bell Telephone Co. P | |
| 11-6-72 | Filed Notice of Motion | |
| 11-6-72 | Order time for defendants Teletype Corp. Western Electric Co. Illinois Bell Telephone Co., Bell Laboratories, Inc. and American Telephone and Telegraph Co. to move, answer or otherwise plead is extended to November 20, 1972. Time for defendant Teletype Corp. to respond to a request for admission is extended to December 10, 1972. Cause is continued for a status report from November 9, 1972 to December 12, 1972 at 10:00 a.m.-Marovitz, J. Mailed notices 11-7-72 P | |
| 11-17-72 | Filed Request for Admissions to Western Electric Co. | |
| 11-17-72 | Filed Request for Admissions to Teletype Corp. | |
| 11-17-72 | Filed Request for admissions to U. S.Dept. of Labor | |
| 11-17-72 | Filed Request for Admissions to American Telephone & Telegraph P | |
| 11-20-72 | Filed Motion of Teletype Corp., Western Electric Co., American Telephone & Telegraph, Illinois Bell Telephone and Bell Telephone Laboratories in lieu of Answer P | |
| 11-30-72 | Filed Plaintiffs Memorandum answering corporate defendants motion to strike and dismiss P | |
| 12-11-72 | Filed Notice of motion and Plaintiff's motion for order to strike corporate defendants motions mentioned below and for such further orders as included herein and Exhibits P | |

| DATE | PROCEEDINGS | Date Order or Judgment Noted |
|---|---|---|
| 12-12-72 | Filed Notice of motion | |
| 12-12-72 | Filed Motion of Teletype Cop., et al. to file briefs | |
| 12-12-72 | Filed Motion of Federal Defendant to dismiss | |
| 12-12-72 | Order time for the defendants to file their supporting briefs is extended to December 22, 1972, plaintiff is granted until January 12, 1973 to file his answering brief....The defendants are granted until January 22, 1973 to file their reply briefs and defendants motions to dismiss are set for disposition on February 23, 1973 at 11:00 a.m. All discovery is stayed until the disposition of the motions to dismiss. Plaintiff's motion for a default is denied. Plaintiff's motion for sanctions is denied without prejudice. Leave is granted plaintiff to withdraw physically from the court files all complaints filed prior to October 6, 1972-Marovitz, J. Mailed notices 12-13-72 P | |
| 12-20-72 | Filed Memorandum in support of Federal defendants motion to dismiss P | |
| 12-22-72 | Filed Memorandum in support of defendants motion to dismiss plaintiffs amended complaint P | |
| 12-27-72 | Filed Affidvit of disqualifaction of Honorable Judge Abraham L. Marovitz | |
| 12-27-72 | Filed Notice of Affidavit of Disqualification of Judge A. P | |
| 1-2-73 | It is Ordered that plaintiff's motion for disqualifaction of Judge be and the same is hereby denied-Marovitz, J. Mailed notices 1-3-73 P | |
| 1-10-73 | Filed Notice of Motion | |
| 1-11-73 | Time for plaintiff to file answering brief is extended to January 29, 1973. The defendants are granted until February 8, 1973 to file reply brief and the disposition of defendants motion to dismiss is continued from February 23, 1973 to March 9, 1973 at 11:00 a.m.-Marovitz, J. Mailed notices 1-12-73 P | |
| 1-19-73 | Filed certified copy of order of USCA entered 1-17-73 it is Ordered that the petition for writ of mandamus or prohibition be and the same is hereby denied. | |
| 1-19-73 | Filed certified copy of order of USCA entered 1-17-73 it is ordered that the motion of plaintiff for stay of all proceedings in District Court pending appellate action on writ of mandamus is denied as moot. P | |

(continued)

D. C. 110A Rev. Civil Docket Continuation

| DATE | PROCEEDINGS | Date Order or Judgment Noted |
|---|---|---|
| 1-29-73 | Filed Notice of Motion and Motion | |
| 1-29-73 | Order time for plaintiff to file answering brief is extended to February 13, 1973, defendants are granted until February 23, 1973 to file reply brief and the disposition of defendants motions to dismiss the complaint is continued from March 9, 1973 to March 23, 1973 at 11:00 a.m.-Marovitz, J.<br>Mailed notices 1-30-73 P | |
| 2-13-73 | Filed Plaintiff's Exception taken to the exceedingly prejudicial proceedings against him, and his answering statements | |
| 2-26-73 | Filed Reply Memorandum in support of Federal Defendants motion to dismiss P | |
| 3-1-73 | Filed Plaintiffs Memorandum to retain as a matter of record the malicious and prejudicial proceedings against him in this case P | |
| 3-7-73 | Filed Notice | |
| 3-7-73 | Filed Federal Defendants motion to strike memoandum | |
| 3-7-73 | Enter Order granting Governments motion for entry of an order striking plaintiffs pleading filed on March 1, 1973 pursuant to Rule 12 (f) of the Federal Rules of Civil Procedure. Plaintiffs motion to strike corporate defendants motions to dismiss is denied-Marovitz, J.<br>Mailed notices 3-8-73 P | |
| 3-23-73 | The Court rules orally from the bench with respect to defendants motions to dismiss and counsel for defendants shall prepare a draft order in accordance therewith and submit same for entry on March 29, 1973 at 10:00 a.m.-Marovitz, J.<br>Mailed notices 3-26-73 P | |
| 3-29-73 | It is Ordered that the federal defendant be dismissed with prejudice and without costs, that defendants Western Electric Co., Inc. American Telephone and Telegraph Co., Illinois Bell Telephone Co., Bell Telephone Laboratories, Inc. are dismissed with prejudice and without costs that with regard to defendant Teletype Corp. counts II through VIII are dismissed with prejudice and without costs and defendant Teletype Corp. is granted leave to answer or otherwise plead to count I within 20 days and further that defendant Teletype have an additional 20 days to file its motion for summary Judgment-DRAFT.<br>Cause is continued for a status report to April 30, 1973 at 10:00 a.m.-Marovitz, J.<br>Mailed notices 4-2-73 P | |

(continued)

| DATE | PROCEEDINGS | Date Order or Judgment Note |
|---|---|---|
| | copy of | |
| 4-3-73 | Filed/Motion for leave to file petition for writ of certiorari in Supreme Court of United States P | |
| 4-18-73 | Filed Motion for summary judgment by Teletype Corp. P | |
| 4-19-73 | Filed Memorandum in support of defendants motion for summary Judgment | |
| 4-19-73 | Plaintiff is granted until April 29, 1973 to file response supported by a memorandum to defendant Teletype's motion for summary judgment. Defendant Teletype is granted until May 4, 1973 to file reply memorandum and defendant Teletypes motion for summary judgment is set for disposition on May 25, 1973 at 11:00 a.m.-Marovitz, J. Mailed notices 4-20-73 P | |
| 4-30-73 | Status report heard-Marovitz, J. Mailed notices 5-1-73 P | |
| 4-30-73 | Filed copy of Notice from Supreme Court of United States of filing of a petition for writ of certiorari P | |

A TRUE COPY ATTEST
H. STUART CUNNINGHAM, CLERK

By _____
DEPUTY CLERK
U. S. DISTRICT COURT, NORTHERN
DISTRICT OF ILLINOIS
MAY 14 1973
DATE: _____

# In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-1440

LEE V. OLENZ, PETITIONER

*v.*

A. L. MAROVITZ, UNITED STATES DISTRICT JUDGE, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner is a former employee of Teletype Corporation, one of the named defendants in a complaint filed by petitioner in the United States District Court for the Northern District of Illinois. Petitioner charged that he had been improperly discharged from his employment, allegedly in violation of numerous federal statutes, including the Age Discrimination in Employment Act of 1967—a statute administered by the United States Department of Labor, which was named as a co-defendant (Pet. 2, 4–5).



503-615—73——1

After various proceedings were held in the district court, petitioner filed a petition for a writ of mandamus or prohibition in the court of appeals to compel the district court judge to recuse himself. On January 17, 1973, the court of appeals denied the petition for an extraordinary writ, and subsequently denied on the ground of mootness petitioner's motion filed on January 17, 1973, to stay all proceedings in the district court pending "appellate action" on his petition for mandamus and prohibition (Pet. App. I, p. 8). A timely petition for rehearing *en banc* was denied on March 8, 1973 (Pet. 1).

The petition challenges on several grounds the propriety of the denial of petitioner's application for a writ of mandamus or prohibition. The issuance of such writs is discretionary (*Schlagenhauf* v. *Holder*, 379 U.S. 104, 111–112, n. 8), and the record shows that the court of appeals did not abuse its discretion in denying such extraordinary relief here. Petitioner's affidavit of disqualification contains allegations essentially similar to those set forth in the petition and attached chronology. These allegations (concerning, *e.g.*, comments by the trial judge about *pro se* cases, the propriety of the trial judge's action in placing documents in the court file which had been entrusted to him personally by the petitioner, and certain statements made by the district court clerk as to the location and timeliness of various court documents) do not provide a reasonable basis for petitioner's allegation of personal bias and prejudice on the part of the trial judge. In these circumstances, the trial judge

was fully justified in denying petitioner's disqualification motion. It follows *a fortiori* that the court of appeals properly denied his petition for a writ of mandamus.[1] See, *e.g.*, *United States* v. *Avila*, 443 F.2d 792, 794–795 (C.A. 5); *United States* v. *Anderson*, 433 F.2d 856, 860–861 (C.A. 8); *Hodgson* v. *Liquor Salesmen's U. Loc. No. 2 of State of N.Y.*, 444 F.2d 1344 (C.A. 2); *Tynan* v. *United States*, 376 F.2d 761 (C.A.D.C.), certiorari denied, 389 U.S. 845.

Moreover, on March 29, 1973 and May 25, 1973, the district court entered orders dismissing the complaint against the Department of Labor and the five defendant corporations, and petitioner will now be free to raise the claims asserted here on a direct appeal to the court of appeals.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

JUNE 1973.

[1] The extraordinary writs are "appropriately issued [only] * * * when there is 'usurpation of judicial power' or a clear abuse of discretion." *Schlagenhauf* v. *Holder*, *supra*, 379 U.S. at 110. The writs are not available when "the most that could be claimed is that the district courts have erred in ruling on matters within their jurisdiction." *Parr* v. *United States*, 351 U.S. 513, 520.

U.S. GOVERNMENT PRINTING OFFICE: 1973